

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 20-CV-81205-RAR

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**COMPLETE BUSINESS SOLUTIONS
GROUP, INC. d/b/a PAR FUNDING, et al.,**

Defendants.

**INVESTOR PLAINTIFFS' MOTION FOR LIMITED RELIEF FROM THE AMENDED
ORDER STAYING LITIGATION AGAINST THE RECEIVERSHIP ENTITIES AND
INCORPORATED MEMORANDUM OF LAW**

Plaintiffs Joseph Caputo and Joan Caputo (the “Delaware Plaintiffs”) and additional investors in A Better Financial Plan (“ABFP”), Dennis Melchior, Linda Letier, Teresa Kirk-Junod, Robert Hawrylak, Joseph Brock, Raymond G. Heffner, John Madden, Thomas D. Green, Maureen A. Green, Dominick Bellizzie, Janet Kaminski, Cynthia Butler, William Butler, Edward Woods, Glen W. Cole, Jr., John Butler, Robert Betz, Michael D. Groff, Shawn P. Carlin, Marcy H. Kershner, and Donald Dempsey (the “E.D.P.A. Plaintiffs,” and collectively, with the Delaware Plaintiffs, “Investor Plaintiffs”), by and through their undersigned counsel, respectfully move for limited relief from the stay of litigation contained within the Court’s August 13, 2020 Amended Order Appointing Receiver [Doc. 141] (“Stay Order”) and for confirmation of the unimpeded right to prosecute Investor Plaintiffs’ claims against certain defendants. Specifically, Investor Plaintiffs seek clarification as to whether the injunction tolls the limitations period for

claims brought against the Receivership Entities¹ in favor of third parties and confirmation that the stay of litigation does not preclude Investor Plaintiffs from proceeding against two defendants in the Delaware District Court action who are not listed within the definition of “Receivership Entities” (the “Eckert Defendants”). As grounds therefore, Investor Plaintiffs state the following:

1. On July 27, 2020, this Court appointed the Receiver to oversee the businesses and assets of Defendants Complete Business Solutions Group, Inc. d/b/a Par Funding, Full Spectrum Processing, Inc., ABetterFinancialPlan.com LLC d/b/a A Better Financial Plan, ABFP Management Company f/k/a Pillar Life Settlement Management Company, LLC, ABFP Income Fund, LLC, ABFP Income Fund 2 L.P., United Fidelis Group Corp., Fidelis Financial Planning LLC, Retirement Evolution Group, LLC, RE Income Fund LLC, and RE Income Fund 2 LLC.

2. On August 4, 2020, the Delaware Plaintiffs filed the action captioned *Caputo et al v. Vagnozzi et al*, Case No. 1:20-cv-01042 (D. Del.) (“Delaware Investor Action”). The Delaware Investor Action asserts claims alleging violations of the federal civil Racketeer Influenced and Corrupt Organizations (“RICO”) statute, 18 U.S.C. § 1964(c); negligent misrepresentation; breach of fiduciary duty; civil conspiracy; common law fraud; unjust enrichment; aiding and abetting fraud; and aiding and abetting breach of fiduciary duty against Dean Vagnozzi; ABetterFinancialPlan.com d/b/a A Better Financial Plan; John W. Pauciulo; Eckert Seamans Cherin & Mellott, LLC; ABFP Management Company, LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 5, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund 7, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel LLC; ABFP Income Fund 3

¹ The term “Receivership Entities” is defined in the Amended Order.

Parallel LLC; ABFP Income Fund 4 Parallel LLC; ABFP Income Fund 6 Parallel LLC; and ABFP Income Fund 7 Parallel LLC.

3. The E.D.P.A. Plaintiffs wish to file a class action complaint in the Eastern District of Pennsylvania asserting claims alleging a violation of the federal civil Racketeer Influenced and Corrupt Organizations (“RICO”) statute, 18 U.S.C. § 1964(c), negligent misrepresentation, breach of fiduciary duty, civil conspiracy, common law fraud and fraudulent inducement, unjust enrichment, aiding and abetting fraud, and aiding and abetting breach of fiduciary duty against Dean Vagnozzi; ABetterFinancialPlan.com d/b/a A Better Financial Plan; John W. Pauciulo; Eckert Seamans Cherin & Mellott, LLC; ABFP Management Company LLC; ABFP Income Fund, LLC; ABFP Income Fund 2, L.P.; ABFP Income Fund 3, LLC; ABFP Income Fund 4, LLC; ABFP Income Fund 5, LLC; ABFP Income Fund 6, LLC; ABFP Income Fund 7, LLC; ABFP Income Fund Parallel LLC; ABFP Income Fund 2 Parallel LLC; ABFP Income Fund 3 Parallel LLC; ABFP Income Fund 4 Parallel LLC; ABFP Income Fund 6 Parallel LLC, Spartan Income Fund, LLC, Pisces Income Fund LLC, Capricorn Income Fund I, LLC, ABFP Multi-Strategy Fund, LP; ABFP Multi-Strategy Fund 2, LP; Pillar Life Settlement Fund I, L.P.; Pillar II Life Settlement Fund, L.P.; Pillar 3 Life Settlement Fund, L.P.; Pillar 4 Life Settlement Fund, L.P.; Pillar 5 Life Settlement Fund, L.P., Pillar 6 Life Settlement Fund, L.P., Pillar 7 Life Settlement Fund, L.P., Pillar 8 Life Settlement Fund, L.P., Atrium Legal Capital, LLC, Atrium Legal Capital 2, LLC, Atrium Legal Capital 3, LLC, Fallcatcher, Inc., Promed Investment Co., L.P., and Woodland Falls Investment Fund, LLC.

4. On August 13, 2020, the Order Appointing Receiver was amended (“Amended Order”) to add the ABFP-affiliated businesses ABFP Income Fund 3, LLC, ABFP Income Fund 4, LLC, ABFP Income Fund 6, LLC, ABFP Income Fund Parallel LLC, ABFP Income Fund 2

Parallel, ABFP Income Fund 3 Parallel, ABFP Income Fund 4 Parallel, and ABFP Income Fund 6 Parallel.

5. The Amended Order also enjoined “[t]he Receivership Entities and all persons receiving notice of this Order by personal service, facsimile or otherwise” from pursuing any action adversely affecting Receivership property. Am. Order ¶ 29. The Amended Order further stays any “Ancillary Proceedings,” defined as including any civil litigation involving Receivership Property or the Receivership Entities. *Id.* ¶ 33. The Amended Order specifically states:

All Ancillary Proceedings are stayed in their entirety, and all Courts having any jurisdiction thereof are enjoined from taking or permitting any action until further Order of this Court. Further, as to a cause of action accrued or accruing in favor of one or more of the Receivership Entities against a third person or party, any applicable statute of limitations is tolled during the period in which this injunction against the commencement of legal proceedings is in effect as to that cause of action.

6. On August 27, 2020, counsel for Receiver filed a Notice of Stay in the Delaware Investor Action. The Notice of Stay states:

Defendants A BETTER FINANCIAL PLAN, ABFP MANAGEMENT CO., LLC, ABFP INCOME FUNDS 1-6, and ABFP INCOME FUNDS 1-6 PARALLEL are “Receivership Entities” as defined in Paragraph 1 of the District Court’s Amended Order Appointing Receiver. As set forth in paragraph 6 of the Amended Complaint, Defendant Dean Vagnozzi is the principal of A BETTER FINANCIAL PLAN and manages, oversees, and coordinates ABFP MANAGEMENT COMPANY, LLC and the ABFP Income Funds. Thus, these entities and Mr. Vagnozzi are subject to the litigation stay entered by the United States District Court for the Southern District of Florida.

Caputo v. Vagnozzi et al, No. 1:20-cv-01042 (D. Del. Aug. 5, 2020) (ECF 24 at 2).

7. On September 4, 2020, counsel for the Investor Plaintiffs conferred with counsel for the Receiver to determine whether the Receiver would oppose the Investor Plaintiffs pursuing

litigation against non-Receivership entities named as Defendants in the Delaware Investor Action, namely John W. Pauciulo and Eckert Seamans Cherin & Mellott, LLC (the “Eckert Defendants”). Investor Plaintiffs also inquired whether the Receiver would oppose the E.D.P.A. Plaintiffs filing a Class Action Complaint in the E.D.P.A. for the limited purpose of preserving the statute of limitations with respect to claims against the Receivership entities and pursuing the claims against the Eckert Defendants in the Investor Actions. On September 9, 2020, counsel for the Receiver advised counsel for the Investor Plaintiffs that the Receiver does not take a position as to this motion.

8. The Investor Plaintiffs hereby seek leave to file the E.D.P.A. Action in order to toll the limitations period for claims brought on behalf of a proposed class of investors in the Receivership Entities against the Receivership Entities and any persons or entities who aided and abetted the Receivership Defendants’ fraudulent scheme.

9. The Amended Order does not appear to toll the statute of limitations accruing in favor of individuals, such as the Investor Plaintiffs, against the Receivership Entities and/or against any third parties that participated in the alleged wrongdoing effectuated by the Receivership Entities and Dean Vagnozzi. The Amended Order is clear that statutes of limitation are tolled in favor of the Receivership Defendants as to any claims that they or the receiver might bring on their behalf or against each other. However, the Amended Order is silent as to the tolling of any statute of limitations for claims against such Defendants or others who committed fraud or aided and abetted the Receivership Defendants’ fraudulent scheme.

10. Therefore, the Investor Plaintiffs seek clarification of the Court’s Amended Order as to whether the statute of limitations governing claims accruing in favor of parties such as the Investor Plaintiffs against the Receivership Defendants and others are tolled.

11. Furthermore, the Investor Plaintiffs respectfully request that the Court confirm that the claims in the Delaware Investor Action brought against the Eckert Defendants are not stayed by the Amended Order and the Investor Plaintiffs may proceed with the prosecution of those claims.

12. The Eleventh Circuit Court of Appeals has held in *Isaiah v. JPMorgan Chase Bank, N.A.*, 960 3.Fd 1296, 1306 (11th Cir. 2020) that “any claims for aiding and abetting the torts of the Receivership Entities’ corporate insiders belong to the investors who suffered losses from the Ponzi scheme, not the Receivership Entities.” *See also id.* (“It is axiomatic that a receiver obtains only the rights of action and remedies that were possessed by the person or corporation in receivership.”) (citing *Freeman v. Dean Witter Reynolds, Inc.*, 865 So. 2d 543, 550 (Fla. Dist. Ct. App. 2003)); *SEC v. Faulkner*, 2020 U.S. Dist. LEXIS 20944, *8 (N.D. Tex. Feb. 6, 2020) (“[A] claim is treated as a receivership asset only if the Receiver could have brought the claim directly.”).

13. The Eckert Defendants are not Defendants in this Action. Allowing the Investor Plaintiffs to pursue claims against the Eckert Defendants will provide the investors in the Receivership Entities with another source to recover the damages inflicted by the scheme effectuated by the Receivership Entities and the Eckert Defendants.

14. Moreover, unlike the Receivership Entities, the Eckert Defendants do not have a limited fund from which damages can be recovered on behalf of Investor Plaintiffs. The Eckert Defendants comprise a well-established law firm and one of its Partners with significant resources, including insurance policies, to cover any damages that may be awarded to Investor Plaintiffs in the Delaware Investor Action. Thus, should the Receiver ultimately decide to pursue

separate claims against the Eckert Defendants on behalf of the Receivership Entities, there undoubtedly will be sufficient resources from which to compensate the Receivership Estate.

15. Pursuant to Local Rule 7.1, the undersigned certifies that counsel has contacted and conferred with Special Counsel and counsel for the Receiver who does not take a position on the filing of the instant motion.

For the foregoing reasons, Investor Plaintiffs respectfully request that this Court clarify its prior Amended Order to explicitly clarify that the statute of limitations for claims of investors against the Receivership Defendants and other third parties are tolled and confirm the Investor Plaintiffs' unimpeded right to proceed forthwith with the prosecution of Investor Claims against the Eckert Defendants in the Delaware Investor Action.

Dated: September 11, 2020.

Respectfully submitted,

BARKER COOK, P.A.

/s/ Chris A. Barker

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was electronically filed and served by electronic notification to all counsel listed on the Court's CMECF system, on this 11th day of September, 2020.

By: /s/ Chris A. Barker